BILL NO. S-89-05-19

SPECIAL ORDINANCE NO. S-82-89

AN ORDINANCE approving CONTRACT FOR RES. #1044-88, BUTLER ROAD-BUTLER COURT WATER MAIN between SCHEIDLEMAN EXCAVATING, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACT FOR RES. #1044-88, BUTLER ROAD-BUTLER COURT WATER MAIN by and between SCHEIDLEMAN EXCAVATING, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, for:

> a systems of water main on Butler Court from Goshen Road southwesterly to Butler Court; on Butler Court from Butler Road northerly and easterly to its terminus. Said system to include 1150+/- L.F. 12" CL 50, 675+/- L.F. 8" CL 50 and 550+/- L.F. of 6" CL 50 ductile iron water main;

the Contract price is Fifty-Six Thousand Three Hundred Sixty-Eight and 87/100 Dollars ($56,368.87), all as more particularly set forth in said Contract, which is on file in the Office of the Board of Public Works and Safety and, is by reference incorporated herein, made a part hereof, and is hereby in all things ratified, confirmed and approved. Two (2) copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay, City Attorney

Wednesday April 12, 1989

Department of Public Works & Safety
Office of the Board
Room 920, City-County Building
Meeting held at 9:00 a.m.

Angela S. Derheimer, Director
C. David Silletto, Member
Michael McAlexander, Member

Helen V. Gochenour, Clerk

1. RECEIVE BIDS:
Res, 1044-88 - Butler Road - Butler Court
Water Main Extension

Award date

ALL STAR CONSTRUCTION ✓	58,651.25
BERCOT, INC. ✓	99 250.50
GEIGER DEVELOPING, INC. ✓	61 550.00
KREAGER BROTHERS EXCAVATING, INC. ✓	69 807.75
LAND, INC. ✓	60 300.00
MERGY CONSTRUCTION, INC. ✓	75 707.50
SCHEIDLEMAN EXCAVATING, INC. ✓	54 248.47

Eng. Estimate $76, 055.00

CONSTRUCTION CONTRACT

Board Order #145-87 **Resolution #1044-88** **Work Order #64058**

THIS CONTRACT made and entered into in triplicate this 10th day of May, 1989, by and between **SCHEIDLEMAN EXCAVATING, INC.**, herein called **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called **OWNER**;

WITNESSETH, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

> **A system of water mains on Butler Road from Goshen Road southwesterly to Butler Court; on Butler Court from Butler Road northerly and easterly to its terminus. Said system to include 1150± L.F. 12" CL 50, 675± L.F. 8" CL 50 and 550± L.F. of 6" CL 50 ductile iron water main.**

All according to Fort Wayne Water Utility, Drawing No. **Y-10644**, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the unit price sum of **$56,368.67 (Fifty Six Thousand, Three Hundred Sixty Eight Dollars and Sixty Seven Cents).** In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The **OWNER** shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by **OWNER** upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety **(90%)** percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the **CONTRACTOR** and approved or

revised by the Engineering Department of the **OWNER** less the aggregate of previous payments, will be paid by **OWNER** to the **CONTRACTOR.**

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the **CONTRACTOR** that work is ready for final inspection and acceptance, the **Board of Public Works and Safety** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection. When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works and Safety** which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the **CONTRACTOR;** provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances** of the **City of Fort Wayne.**

Any judgment rendered against the **City of Fort Wayne** in any suits for damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any **Subcontractor(s)** in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The **CONTRACTOR** further agrees to be bound by Section 15-13 (as amended), of the **Code of the City of Fort Wayne, Indiana of 1974,** as passed by the **Common Council** of the **City of Fort Wayne, Indiana**

as **General Ordinance No. G-34-78** (as amended) on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the Compliance Office within ten **(10)** days after completion of construction or upon request of the **Office of Compliance.**

ARTICLE 7: PREVAILING WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes** of the **State of Indiana**, and the **Ordinances** of the **City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids for Resolution #1044-88
b. Instructions to Bidders for Resolution #1044-88
c. Contractor's Proposal dated April 12, 1989
d. Fort Wayne Engineering Department Drawing Y-10644
e. Supplemental Specifications for Resolution #1044-88
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance #G-34-78 (as amended)
h. Prevailing Wage Scale
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. MBE/WBE Commitment Form.
o. Form 96.

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall **guarantee** the materials and workmanship for a period of **one (1) year** following **written** acceptance of the work by the **OWNER.**

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to **OWNER**, within ten **(10)** days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana.**

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Director** of **Board of Public Works and Safety** of the **OWNER**, and his/her decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works and Safety.**

ARTICLE 12: COMPLETION DATE

The **CONTRACTOR** agrees to complete the work specified in the contract within sixty **(60)** consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the **OWNER** by the **Mayor** and the **Board of Public Works and Safety** of the **City of Fort Wayne, Indiana,** shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana,** and should said **Common Council** fail to approve the same within ninety **(90)** days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by **Laws** of the **State of Indiana.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRIBUTOR: SCHEIDLEMAN EXCAVATING, INC.

By: _____
John D. Scheidleman, President

CITY OF FORT WAYNE

By: _____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

By: _____
Angela S. Derheimer, Director
Public Works

By: _____
C. David Silletto, Director
Administration and Finance

By: _____
Michael McAlexander, Director
Public Safety

ATTEST:

_____
Helen V. Gochenour, Clerk

ACKNOWLEDGEMENT

STATE OF INDIANA)
)SS
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 28 day of April, 1989, personally appeared the within named **John D. Scheidleman**, who being by me first duly sworn upon his oath that he is the **President** of **SCHEIDLEMAN EXCAVATING, INC.**, and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of and for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, and affixed my official seal.

M. Carol Cicero
Notary Public

M. CAROL CICERO
Printed name of notary

My commission expires:

10/27/92

Resident of ALLEN County.

ACKNOWLEDGEMENT

STATE OF INDIANA)
)SS
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 15th day of May, 1989, personally appeared the within named **Paul Helmke, Mayor** of the **City of Fort Wayne; Angela S. Derheimer, C. David Silletto,** and **Michael McAlexander, Members** of the **Board of Public Works and Safety, City of Fort Wayne, Indiana,** and **Helen V. Gochenour, Clerk** of the **Board of Public Works and Safety, City of Fort Wayne, Indiana**, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, Members, and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority to do so and acknowledge said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, and affixed my official seal.

Carolyn S. Eschmann
Notary Public

Carolyn S. Eschmann
Printed name of Notary

My commission expires:

6-16-91

Resident of Allen **County.**

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 1989.

Special Ordinance Number _____.

Wausau Insurance Companies

With Offices at Wausau, Wisconsin

Any correspondence in relation to this bond should be directed to:
Wausau Insurance Companies
Surety Underwriting
2000 Westwood Drive
Wausau, WI 54401

PERFORMANCE AND PAYMENT BOND

Bond No. 1950 26 066723

KNOW ALL MEN BY THESE PRESENTS:

That Scheidleman Excavating, Inc.

as Principal, and EMPLOYERS INSURANCE OF WAUSAU A Mutual Company as Surety, are held and firmly bound unto city of Fort Wayne as Obligee, in the full and just sum of Fifty-six thousand, three hundred sixty-eight dollars &67/100 Dollars ($ 56,368.67--------), lawful money of the United States, to the payment of which sum, well and truly to be made, the Principal and Surety bind themselves, their and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has entered into a written contract dated May 10, 1989 with the Obligee for

Butler Road - Butler Court Watermain Extension

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal shall faithfully perform said contract according to its terms, covenants and conditions and shall promptly pay all persons supplying labor or material to the Principal for use in the prosecution of the work under said contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

Subject to the named Obligee's priority, all persons who have supplied labor or material directly to the Principal for use in the prosecution of the work under said contract shall have a direct right of action under this bond.

The Surety's aggregate liability hereunder shall in no event exceed the amount set forth above.

No claim, suit or action shall be brought hereunder after the expiration of one (1) year following the date on which Principal ceased work on said contract. If this limitation is made void by any law controlling the construction hereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law.

Signed, sealed and dated May 1, 1989

M. Carol Circle
(Witness)

Scheidleman Excavating, Inc.
(Principal) (Seal)

By John D. Scheidleman, President (Title)

Sandy Rhoads
Sandy Rhoads (Witness)

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company
(Surety) (Seal)

By Bruce Pippenger
Bruce Pippenger Attorney-in-Fact

No. 219-049- 00028

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:
That the EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, a corporation duly organized and existing under the laws of the State of Wisconsin, and having its principal office in the City of Wausau, County of Marathon, State of Wisconsin, has made, constituted and appointed, and does by these presents make, constitute and appoint

BRUCE PIPPENGER

its true and lawful attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, seal, acknowledge and deliver ANY OR ALL BONDS, UNDERTAKINGS, RECOGNIZANCES OR OTHER WRITTEN OBLIGATIONS IN THE NATURE THEREOF, NOT TO EXCEED THE PENAL SUM OF FIVE MILLION DOLLARS ($5,000,000).

and to bind the corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the corporation and duly attested by its secretary hereby ratifying and confirming all that the said attorney-in-fact may do in the premises.

This power of attorney is granted pursuant to the following resolution adopted by the Board of Directors of said Company at a meeting duly called and held on the 18th day of May, 1973, which resolution is still in effect:

"RESOLVED, that the President and any Vice President — elective or appointive — of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company be, and that each of them hereby is, authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute on behalf of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company bonds, undertakings and all contracts of suretyship; and that any secretary or assistant secretary be, and that each or any of them hereby is, authorized to attest the execution of any such power of attorney, and to attach thereto the seal of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company."

"FURTHER RESOLVED, that the signatures of such officers and the seal of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures and facsimile seal shall be valid and binding upon the EMPLOYERS INSURANCE OF WAUSAU A Mutual Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached."

IN WITNESS WHEREOF, EMPLOYERS INSURANCE OF WAUSAU A Mutual Company has caused these presents to be signed by the vice president and attested by its assistant secretary, and its corporate seal to be hereto affixed this 1ST day of JULY, 19 85.

CORPORATE SEAL

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

By _____
R. D. Farnsworth — Vice President

Attest: _____
J. L. Smith — Assistant Secretary

STATE OF WISCONSIN)
) ss.
COUNTY OF MARATHON)

On this 1ST day of JULY, 19 85, before me personally came R. D. Farnsworth, to me known, who being by me duly sworn, did depose and say that he is a vice president of the EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal and that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein first above written.

_____
Donna Lutzow — Notary Public
NOTARY PUBLIC
STATE OF WISCONSIN
MY COMMISSION IS PERMANENT

CERTIFICATE

STATE OF WISCONSIN)
CITY OF WAUSAU) ss.
COUNTY OF MARATHON)

I, the undersigned, assistant secretary of EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, a Wisconsin corporation, do hereby certify that the foregoing and attached power of attorney, **WHICH MUST CONTAIN A VALIDATING STATEMENT PRINTED IN THE MARGIN THEREOF IN RED INK,** remains in full force and has not been revoked; and furthermore that the resolution of the Board of Directors set forth in the power of attorney is still in force.

Signed and sealed in the City of Wausau, Marathon County, State of Wisconsin, this 1st day of May, 19 89.

CORPORATE SEAL

_____
J. L. Smith — Assistant Secretary

NOTE: IF YOU HAVE ANY QUESTIONS REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY, CALL TOLL FREE (800) 826-1661. (IN WISCONSIN, CALL (800) 472-0041).

WARNING
THIS IS NOT A VALID POWER OF ATTORNEY IF THIS STATEMENT DOES NOT APPEAR IN RED INK.

Read the first time in full and on motion by Div Quirk, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock, ____.M.,E.S.T.

DATED: 5-23-89.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry, seconded by Shambach, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY				✓
BURNS	✓			
GiaQUINTA				✓
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
STIER	✓			
TALARICO	✓			

DATED: 6-13-89

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ (APPROPRIATION) ~~(GENERAL)~~ (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE ~~RESOLUTION~~ NO. S-82-89 on the 13th day of June, 19 89,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL

Charles B. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of June, 19 89, at the hour of 10:00 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of June, 19 89, at the hour of 5:15 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr. _____

TITLE OF ORDINANCE Contract for Res. #1044-89, Butler Road-Butler Court Water Main Extension

DEPARTMENT REQUESTING ORDINANCE Board of Public Works & Safety

SYNOPSIS OF ORDINANCE The Contract for Res. #1044-89, Butler Road-Butler Cou is for a systems of water main on Butler Court from Goshen Road southwesterly to Butler Court; on Butler Court from Butler Road northerly and easterly to its terminus. Said system to include 1150± L.F. 12" CL 50, 675± L.F. 8" CL 50 and 550± L.F. of 6" CL 50 ductile iron water main. Scheidleman Excavating, Inc., is th contractor.

S-89-05-19

EFFECT OF PASSAGE Improved water conditions at above location.

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $56,368.87

ASSIGNED TO COMMITTEE _____

BILL NO. S-89-05-19

REPORT OF THE COMMITTEE ON CITY UTILITIES

MARK E. GiaQUINTA, CHAIRMAN
THOMAS C. HENRY, VICE CHAIRMAN
LONG, BURNS, TALARICO

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving CONTRACT FOR RES. #1044-88, BUTLER ROAD-BUTLER COURT WATER MAIN between SCHEDLEMAN EXCAVATING, INC. and the City of Fort Wayne, Indiana in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID

(ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Mark E. GiaQuinta			
[redacted]			
Thomas C. Henry			

DATED: 6-13-89

Sandra E. Kennedy
City Clerk